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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff,

vs.

APPLE INC.,

Defendant.

No. 3:20-CV-05640-YGR

**DECLARATION OF M. BRENT  
BYARS IN FURTHER SUPPORT OF  
PLAINTIFF EPIC GAMES INC.'S  
MOTION FOR A TEMPORARY  
RESTRAINING ORDER AND ORDER  
TO SHOW CAUSE WHY A  
PRELIMINARY INJUNCTION  
SHOULD NOT ISSUE**

Date: August 24, 2020, 3:00 p.m.

Courtroom: 1, 4th Floor

Judge: Hon. Yvonne Gonzalez-Rogers

1 I, M. Brent Byars, declare as follows:

2 1. I am an attorney at the law firm of Cravath, Swaine & Moore LLP, and am one of  
3 the attorneys representing Epic Games, Inc. in this action. I am admitted to appear before this  
4 Court *pro hac vice*.

5 2. I submit this declaration pursuant to the Court's Order Permitting Limited Reply  
6 Brief dated August 21, 2020 (ECF No. 38), and in further support of Plaintiff Epic Games, Inc.'s  
7 Motion for a Temporary Restraining Order and Order to Show Cause Why a Preliminary  
8 Injunction Should Not Issue (ECF No. 17). The contents of this declaration are based on my  
9 personal knowledge and on information and documents provided to me by Epic Games, Inc. If  
10 called as a witness, I could and would competently testify thereto.

11 3. Apple maintains a Developer Program website through which application  
12 developers may access information concerning their developer accounts. Attached as Exhibits A  
13 through F are true and correct screenshots taken at my direction of the Membership Information  
14 that is displayed when logged into the six separate developer accounts of Epic Games, Inc. and its  
15 affiliates, reflecting for each account: (1) the "Team Name" or entity name, (2) the "Team ID" or  
16 account number (redacting all but the last two characters), and (3) the entity's address. In  
17 addition, Epic Games, Inc. has a separate developer account through Apple's Developer  
18 Enterprise Program. Attached as Exhibit G is a true and correct screenshot taken at my direction  
19 of the Membership Information displayed when logged into the Developer Enterprise Program  
20 account belonging to Epic Games, Inc. According to Apple's website, Apple charges an annual  
21 fee of \$99 for each developer account and an annual fee of \$299 for each developer enterprise  
22 account.

23 4. For each developer account, Apple requires that the developer owning such  
24 account agree to (1) an Apple Developer Agreement, and (2) an Apple Developer Program  
25 License Agreement (or in the case of the Developer Enterprise Program, a Developer Enterprise  
26 Program License Agreement). True and correct copies of these Agreements, corresponding to  
27 each developer account held by Epic Games, Inc. and its affiliates, are attached as Exhibits H  
28 through S. (I was not able to obtain prior to filing the Agreements from the developer account

1 belonging to one entity, Quixel AB, and these are not included.) These Agreements specify that  
 2 each Agreement is accepted by a developer when an agent of the developer “press[es] the ‘agree’  
 3 button” (e.g. Ex. H at 1) or “by downloading or using the Apple software or Apple services” (e.g.  
 4 Ex. I at 1).


5         5. Attached as Summary Exhibit T is a summary of the Membership Information  
 6 pertaining to each separate developer account of Epic Games, Inc. and its affiliates, together with  
 7 an identification of the iOS mobile applications (if any) that have been published by each account  
 8 and that are listed as available (or, in the case of Fortnite, was available prior to August 13, 2020)  
 9 in Apple’s App Store. Summary Exhibit T also identifies each Exhibit where the (1) Developer  
 10 Agreement, and (2) Developer Program License Agreement (or Developer Enterprise Program  
 11 License Agreement) corresponding to each developer account may be found, and the dates on  
 12 which each Agreement was “accepted” according to the information on Apple’s Developer  
 13 Program website. Summary Exhibit T was prepared at and under my direction, and was reviewed  
 14 by me for accuracy.

15         6. To access Apple application development tools, including Apple Software  
 16 Development Kits (“SDKs”) and other tools, Apple requires that individual and organizational  
 17 application developers (including Epic Games, Inc. and its affiliates) accept the Xcode and Apple  
 18 SDKs Agreement. A true and correct copy of the Xcode and Apple SDKs Agreement drawn  
 19 from Apple, Inc.’s website is attached as Exhibit U. Apple permits developers to access these  
 20 tools by “clicking ‘agree’ or by downloading, using or copying any part of this Apple software or  
 21 using any part of the Apple services”, which the Agreement deems to be acceptance of the  
 22 Agreement “on your own behalf and/or on behalf of your company or organization” (Ex. U at 1).  
 23 Summary Exhibit T also lists the Xcode and Apple SDKs Agreement entered into by Epic  
 24 Games, Inc. and its affiliates.

25         7. Attached hereto as Exhibit V is a collection of true and correct copies of public  
 26 online posts and comments regarding *Unreal Engine*. The table below lists the links to the  
 27 original posts and comments, and the respective page numbers for each thread in the Exhibit.  
 28

Source	URL (all last accessed Aug. 21, 2020)	Exhibit Pages
Twitter	<a href="https://twitter.com/joshfromireland/status/1295445570044264448">https://twitter.com/joshfromireland/status/1295445570044264448</a>	1
Twitter	<a href="https://twitter.com/ShiinaBR/status/1295439235135213568">https://twitter.com/ShiinaBR/status/1295439235135213568</a>	2
Twitter	<a href="https://twitter.com/tomwarren/status/1295435205440921601">https://twitter.com/tomwarren/status/1295435205440921601</a>	3
Twitter	<a href="https://twitter.com/imranzomg/status/1295438968146685952">https://twitter.com/imranzomg/status/1295438968146685952</a>	4
Twitter	<a href="https://twitter.com/stroughtonsmith/status/1295512490944626689">https://twitter.com/stroughtonsmith/status/1295512490944626689</a>	5
Twitter	<a href="https://twitter.com/thisistechtoday/status/1295460091446009856">https://twitter.com/thisistechtoday/status/1295460091446009856</a>	6
Twitter	<a href="https://twitter.com/azurthedragon/status/1295728717227065345">https://twitter.com/azurthedragon/status/1295728717227065345</a>	7
Twitter	<a href="https://twitter.com/NeonIain/status/1295597899707908099">https://twitter.com/NeonIain/status/1295597899707908099</a>	8
Twitter	<a href="https://twitter.com/MrStrawberrie/status/1295440597054971906">https://twitter.com/MrStrawberrie/status/1295440597054971906</a>	9
Twitter	<a href="https://twitter.com/Hrief988/status/1295439947395215360">https://twitter.com/Hrief988/status/1295439947395215360</a>	10
Twitter	<a href="https://twitter.com/GamingReinvent/status/1295459203889467399">https://twitter.com/GamingReinvent/status/1295459203889467399</a>	11
Twitter	<a href="https://twitter.com/V03Angelos/status/1295455743462838273">https://twitter.com/V03Angelos/status/1295455743462838273</a>	12

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that I executed this declaration on August 23, 2020 in Brookhaven, New York.



\_\_\_\_\_  
M. Brent Byars